

(i) Whether the operation of the project has been satisfactory insofar as the interests of navigation are concerned.

(ii) Whether any infraction by the licensee of the conditions in the interest of navigation has come to the attention of the Division Engineer.

(f) *Delegation of authority for approval of structural plans for non-Federal hydroelectric projects affecting navigation.* The authority vested in the Secretary of the Army by section 4(e) of the Federal Power Act is hereby delegated to the Chief of the Engineers for promulgation with regard to approval of plans of structures filed with the Federal Power Commission in connection with licensing of non-Federal hydroelectric projects.

(Sec. 4(e), 49 Stat. 840; 16 U.S.C. 797(e); Secretary of the Army memorandum for the Chief of Engineers, dated March 11, 1975)

[33 FR 18670, Dec. 18, 1968, as amended at 40 FR 17023, Apr. 16, 1975]

CROSS REFERENCE: For regulations of the Federal Energy Regulatory Commission, see 18 CFR chapter I.

§ 209.141 Coordination of hydroelectric power operations with power marketing agencies.

(a) *Purpose.* This regulation establishes policies and procedures for coordinating the operation of the Corps of Engineers' hydroelectric generating facilities with the power marketing agencies.

(b) *Applicability.* This regulation applies to all civil works field operating agencies (FOA) having generating facilities producing marketable electric power.

(c) *References.* (1) Section 5, Pub. L. 534, 78th Congress, Flood Control Act of 1944, December 22, 1944 (58 Stat. 889).

(2) Section 302, Pub. L. 95-91, 95th Congress, Department of Energy Organization Act, August 4, 1977 (91 Stat. 565).

(d) *Background.* Section 5 of the Act of December 22, 1944 (Pub. L. 534, 78th Congress), provides that electric power and energy generated at reservoir projects under the control of the Department of the Army and in the opinion of the Secretary of Army not required in the operation of such projects shall be delivered to the Secretary of

Interior for transmittal and disposal in a manner to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. Section 302 of the Department of Energy Organization Act (Pub. L. 95-91) transfers all functions of the Secretary of Interior under section 5 of the 1944 Act to the Secretary of Energy together with all other functions of the Secretary of Interior, and officers and components of the Department of the Interior, with respect to the Southeastern Power Administration; the Southwestern Power Administration; the Alaska Power Administration; the Bonneville Power Administration; and the power marketing functions of the Bureau of Reclamation.

(e) *Policies.* (1) The Corps is responsible for operating the hydroelectric power projects and providing information affecting cost and availability of power to the power marketing agencies. Marketing the generated power declared excess to the needs of the projects and recovering Federal investment are the responsibilities of the power marketing agencies.

(2) All FOA Commanders will develop, in coordination with their respective power marketing agency, a system for exchanging operating information. The system will include general operating information and information on conditions that could substantially affect costs or power availability.

(f) *Delegation.* Responsibility for coordinating the exchange of information may be delegated to the District Engineer at the discretion of the Division Engineer.

(g) *Procedures—(1) Specific requirements—(i) Continuing.* Prompt written notification will be provided to the appropriate power marketing agency each time a change in power operations or conditions which could substantially affect costs or power availability is anticipated.

(ii) *Annual.* Annually, when no changes in power operations or costs are expected for the succeeding 12-month period, the marketing agency will be notified of that fact in writing.

(2) *FOA responsibility.* The FOA directly responsible for communicating

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with the marketing agency will develop appropriate reporting procedures in coordination with that agency.

[43 FR 8258, Mar. 1, 1978]

§ 209.155 Expenditure of Federal funds for work shoreward of harbor lines.

(a) Section 5 of the River and Harbor Act of July 13, 1892 (27 Stat. 111; 33 U.S.C. 628), prohibits the expenditure of money appropriated for the improvement of rivers and harbors for dredging inside of harbor lines duly established.

(b) It is not the policy of the Department to expend Federal funds for the removal of wrecks or other obstructions shoreward of established harbor lines.

§ 209.160 The California Debris Commission.

Section 1 of the Act of Congress of March 1, 1893 (27 Stat. 507; 33 U.S.C. 661), created the California Debris Commission, consisting of three officers of the Corps of Engineers, to regulate under the supervision of the Chief of Engineers and direction of the Secretary of the Army, hydraulic mining in the territory drained by the Sacramento and San Joaquin River systems, California. Under section 9 of the act (27 Stat. 508; 33 U.S.C. 669), the individual proprietor or proprietors, or in case of a corporation, its manager or agent appointed for that purpose, owning mining ground in this territory which it is desired to work by the hydraulic process, must file with the Commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by the Commission. The law contains detailed instructions with regard to facts required to be shown by the petitioner and the procedure to be followed by the Commission in issuing an order directing the methods and specifying the manner in which operations shall proceed. Full information on law and procedure can be obtained from the Secretary, California Debris Commission, 650 Capitol Mall, Sacramento, California 95814.

§ 209.170 Violations of laws protecting navigable waters.

(a) [Reserved]

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(b) *Injuries to Government works.* Section 14 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408), makes it unlawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works. (The Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest).

(c) *Injurious deposits.* (1) Section 13 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), makes it unlawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft, or from the shore, wharf, manufacturing establishment, or mill, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water, or to deposit or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or